

Message Text

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ORIGIN EB-11

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FM SECSTATE WASHDC

TO AMEMBASSY BERN PRIORITY

INFO AMCONSUL ZURICH

UNCLAS STATE 126210

E.O. 11652, N/A

TAGS: ETRD, US, SZ

SUBJECT: FTC/NESTLE ANTITRUST CASE

REFERENCE: BERN 2160

1. INFORMATION IN REFTEL HAS BEEN PASSED TO THE FTC BUREAU OF COMPETITION. AT THE REQUEST OF NESTLE'S U.S. ATTORNEY, STATE HAD ALREADY RECEIVED FULL ASSURANCES FROM FTC THAT ATTORNEYS WOULD HAVE AN OPPORTUNITY TO MEET WITH FTC DIRECTOR OF COMPETITION BUREAU BEFORE STAFF RECOMMENDATION WENT FORWARD TO THE COMMISSION. IF ADDITIONAL MATERIAL NOT SUBMITTED TO FTC PRIOR TO THAT MEETING, DIRECTOR OF COMPETITION BUREAU PLANS TO BRING UP MATTER OF ADDITIONAL INFORMATION AT MEETING.

2. FTC UNABLE TO INDICATE IF LIBBY AND STOUFFER ACQUISITIONS BEING HANDLED AS SEPARATE CASES OR JOINT CASE.

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INFORMATION ON STAFF PREPARATION OF CASES IS FREQUENTLY

SOUGHT BY ATTORNEYS AS IT CAN AFFECT LEGAL APPROACH. FTC DOES NOT REPEAT NOT MAKE THIS INFORMATION AVAILABLE TO OUTSIDE ATTORNEYS AND THEREFORE CANNOT MAKE EXCEPTION IN THIS CASE. IN STATING THIS, HOWEVER, DIRECTOR OF COMPETITION BUREAU AGAIN EMPHASIZED COMMITMENT TO MEET WITH U.S. ATTORNEYS FOR NESTLE BEFORE STAFF RECOMMENDATION GOES FORWARD.

3. FYI -- WHILE THE DEPARTMENT UNDERSTANDS THE CONCERN OF THE EMBASSY AND THE SWISS GOVERNMENT WITH EXTENDED AND COMPLEX ANTITRUST INVESTIGATION, THE APPROACH SUGGESTED IN REFTEL BY SWISS GOVERNMENT DEMONSTRATES A MAJOR PROBLEM WE HAVE ENCOUNTERED IN WASHINGTON. DEPARTMENT HAS ON SEVERAL OCCASIONS PRESSED FTC FOR AN EARLY DECISION TO THE VERY LIMITS OF GOOD INTERAGENCY RELATIONS. AT SAME TIME, U.S. ATTORNEYS FOR NESTLE HAVE ADVISED FTC OR IMPLIED TO FTC THAT APPROACHES THROUGH CHANNELS OTHER THAN THE ATTORNEYS SHOULD, IN EFFECT, BE IGNORED. MUCH DELAY HAS BEEN RESULT NESTLE ATTORNEYS DELAYS IN SUBMITTING REQUESTED MATERIAL OR IN SUBMISSION OF UNEXPECTED AND UNSOLICITED MATERIAL AT A LATE STAGE WHICH REQUIRED FURTHER FTC ANALYSIS. FTC UNDERSTANDABLY PERPLEXED AT REQUESTS FOR DELAY OR FOR ANALYSIS OF FURTHER MATERIAL THROUGH ONE CHANNEL AND SIMULTANEOUS REQUESTS FOR AN EARLY DECISION THROUGH ANOTHER. NOW REFTEL CONTAINS SUGGESTION FOR DELAY THROUGH CHANNEL WHICH HAS BEEN PRESSING FOR EXPEDITIOUS CONSIDERATION SINCE NESTLE SEEMS TO BE MORE CONCERNED ABOUT ITS ACQUISITION OF STOUFFER AND PRESUMABLY WANTS MORE TIME TO PRESENT MATERIAL ON THIS ASPECT OF THE CASE. DEPARTMENT BELIEVES FTC IS DEMONSTRATING MOST CAREFUL CONSIDERATION OF CASE IN VIEW OF FOREIGN AFFAIRS ASPECTS. EMBASSY MAY AT ITS DISCRETION PASS THE ESSENCE OF THIS PARAGRAPH TO APPROPRIATE SWISS OFFICIALS. SISCO

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